U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

(b)(6)

U.S. Citizenship and Immigration Services

DATE: APR 15 2015 OFFICE: NEBRASKA SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. We will dismiss the appeal.

The petitioner seeks classification under section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as an alien of exceptional ability in the sciences, the arts, or business, or as a member of the professions holding an advanced degree. The petitioner seeks employment as a computer science controls engineer. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner had not established that he qualifies for the classification sought.

On appeal, the petitioner submits a statement and supporting evidence including a university transcript, job offer documentation, and other materials.

I. Law

Section 203(b) of the Act states, in pertinent part:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. –
>
> > (A) In General. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer –
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

II. Facts and Analysis

The petitioner filed the Form I-140, Immigrant Petition for Alien Worker, on May 28, 2013. At that time, the petitioner did not specify whether he seeks classification as an alien of exceptional ability in the sciences, the arts, or business, or as a member of the professions holding an advanced degree. The director addressed both of these classifications in the May 9, 2014 denial notice. In the interim, the director issued a request for evidence (RFE) on October 18, 2013, but the RFE only addressed the national interest waiver; the director did not request evidence regarding either underlying

immigrant classification. Nevertheless, some of the exhibits that the petitioner submitted in response to the RFE are relevant to the discussion of the classification, and we will consider them below.

a. Exceptional Ability

The regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. The regulation at 8 C.F.R. § 204.5(k)(3)(ii) provides that, to show exceptional ability in the sciences, arts, or business, the petitioner must submit at least three of the following:

> (A) An official academic record showing that the alien has a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning relating to the area of exceptional ability;
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> (B) Evidence in the form of letter(s) from current or former employer(s) showing that the alien has at least ten years of full-time experience in the occupation for which he or she is being sought;
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> (C) A license to practice the profession or certification for a particular profession or occupation;
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> (D) Evidence that the alien has commanded a salary, or other remuneration for services, which demonstrates exceptional ability;
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> (E) Evidence of membership in professional associations; or
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> (F) Evidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations.
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> (iii) If the above standards do not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence to establish the beneficiary's eligibility.

If a petitioner has submitted the requisite evidence, USCIS determines whether the evidence demonstrates "a degree of expertise significantly above that ordinarily encountered" in the sciences, arts, or business. 8 C.F.R. § 204.5(k)(2). *Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010), sets forth a two-part approach where the evidence is first counted and then considered in the context of a final merits determination. While involving a different classification than the one at issue in this matter, the similarity of the evidentiary analysis required for the two classifications makes the court's reasoning persuasive to the classification sought in this matter.

An official academic record showing that the alien has a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning relating to the area of exceptional ability. 8 C.F.R. § 204.5(k)(3)(ii)(A)

In his initial submission, the petitioner stated: "I have obtained my **5 year baccalaureate degree in Computer Science & Engineering** at in the United States, Michigan" (emphasis in original). The petitioner submitted a photocopy of a transcript from issued , 2010, listing the courses that the petitioner took during five non-consecutive semesters between fall 2006 and winter 2010, as well as 49 transfer credits. The transcript does not state that the university awarded him a degree. In the denial notice, the director stated that "the evidence submitted does not meet this criterion" because "[t]he transcript does not show that the petitioner was awarded an academic degree."

On appeal, the petitioner submits a transcript from The transcript, dated 2015, indicates that the university awarded the degree on 2014. This document shows that the university had not yet conferred the degree at the time the petitioner filed the petition on May 28, 2013. The petitioner must establish that he is eligible for the requested benefit at the time of filing the benefit request. 8 C.F.R. § 103.2(b)(1). A petition that was properly denied because the petitioner did not hold necessary qualifications at the time of filing cannot be subsequently approved at a future date when the petitioner may become qualified under a new set of facts. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971).

The record shows that did not award a bachelor's degree to the petitioner until 2014. The petitioner maintains that he qualified for the degree beforehand, but that the university improperly withheld the degree from him. He has not supported this assertion. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

The petitioner has not submitted an official academic record showing that he held a degree as of the petition's filing date. Therefore, he has not satisfied this criterion.

Evidence in the form of letter(s) from current or former employer(s) showing that the alien has at least ten years of full-time experience in the occupation for which he or she is being sought. 8 C.F.R. § 204.5(k)(3)(ii)(B)

In his initial statement, the petitioner stated that he had "**almost a decade worth [of] work experience**" (emphasis in original). The petitioner submitted a photocopy of an affidavit that he signed on December 4, 2012, attesting to his "extensive field experiences." The affidavit is not from a current or former employer, and it does not provide dates of employment. Therefore, it does not meet the regulatory requirements. Likewise, a letter from mentions the petitioner's "work at ' (*sic*), but provides no dates, and Mr.

did not claim to be a current or former employer. Rather, he and the petitioner "went to school together."

To explain the lack of employer letters, the petitioner stated: "Please [note that] some supervisors I worked under [have been] replaced by current management who has [*sic*] less knowledge of my duties and functions performed. In other case[s], the company moved from their original location to a new location." A printout of an electronic mail exchange shows that he had attempted to contact a former employer but the message could not be delivered.

Copies of Internal Revenue Service (IRS) Form W-2, Wage and Tax Statements, show that paid the petitioner $3,324.00 in 2008, and paid him $9,907.20 in 2011. These documents are not letters from employers, but they are secondary evidence of employment because they document payment of wages. These statements establish what appear to be only a few months of employment; they do not establish the nature of that employment.

The petitioner's RFE response included letters from several employers, including his current employer, (identified as). Submitted letters from representatives of did not provide starting or ending dates of employment. a human resources administrator at stated that the petitioner "was accepted as a summer intern [in] May 2008." She did not state when the employment ended, but she stated that the petitioner worked for the company "over the summer," indicating that the employment lasted no longer than a few months.

senior business analyst at stated that the petitioner served "as an integrator on [his] launch team," in a position that requires "5 years of extensive experience." Mr. did not state where the petitioner earned the five years of required prior experience, or how Mr. verified that prior experience.

The director, in denying the petition, found that the petitioner had not documented ten years of full-time experience in the occupation. On appeal, the petitioner states: "For more than 10 years, I have gain[ed] full time hands on and class room experience." Academic experience falls under a different criterion at 8 C.F.R. § 204.5(k)(3)(ii)(A). The present criterion concerns full-time experience to which "current or former employer(s)" can attest.

The petitioner states that he submitted IRS Forms W-2 and "recently requested . . . letters from former employers" and co-workers. The director took the previously submitted letters and other materials into account. The letters do not establish at least ten years of full-time experience, and the director noted that neither of the IRS Forms W-2 shows an amount consistent with a full year's employment.

The appeal includes copies of new electronic mail messages from late October 2013, showing the petitioner's continued attempts to contact former employers for experience letters. The petitioner

did not submit the required experience letters at the time of filing, in response to the RFE, or on appeal.

For the reasons discussed above, the petitioner has not met this criterion.

> *A license to practice the profession or certification for a particular profession or occupation.* 8 C.F.R. § 204.5(k)(3)(ii)(C)

The petitioner's initial submission included a copy of a "Certificate of Completion" from stating that the petitioner completed a course on May 24, 2011. This certificate is not certification for a particular profession or occupation. It is, rather, documentation that the petitioner completed a specific training course.

The petitioner's RFE response included a copy of a February 26, 2012 certificate indicating that he "is recognized by the This petitioner has not shown that is a recognized profession or occupation. The certificate instead appears to demonstrate that the petitioner is proficient in certain types of software from one company.

In the denial notice, the director noted the petitioner's submission of the certificates, but concluded: "The completion of an employer's security training and of manufacturer-specific product training do not grant [a] license to practice a profession or professional certification for [an] occupation in the field of computer science and engineering."

On appeal, the petitioner states: "I believe my educational background is a license or full certification to practice the profession, since a license to practice has not been defined to specifically state what form of license is needed." The petitioner notes that the regulatory language does not specifically require "a **state approved license or federal approved license to practice** the profession [or] occupation" (emphasis in original), and asserts that his certifications show "that the employee has gain[ed] extensive skill."

The petitioner has not shown that the certificates demonstrate certification for a particular profession or occupation, as the regulation requires. Rather, the certifications relate to specialized skills that one may exercise in the course of engaging in a profession or occupation.

> *Evidence that the alien has commanded a salary, or other remuneration for services, which demonstrates exceptional ability.* 8 C.F.R. § 204.5(k)(3)(ii)(D)

As noted above, copies of IRS Forms W-2 show that paid the petitioner $3,324.00 in 2008, and paid him $9,907.20 in 2011. The petitioner's RFE response included an October 1, 2013 job offer letter from proposing "to continue [the petitioner's] project with for $43.56 per hour. The petitioner provided no basis for comparison to show that these rates of compensation demonstrate exceptional

ability. The director, therefore, concluded that the petitioner had not established that his remuneration demonstrates exceptional ability.

On appeal, the petitioner states that the director "did not specify how much the beneficiary should make or what the commanded salary or other remuneration is." The burden is on the petitioner to establish eligibility for the benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Occupations vary widely in the standard rate of compensation, and the regulation has fixed no specific amount that one must earn. Rather, it is up to the petitioner to compare his earnings to the level of compensation ordinarily encountered in the field, in order to show that his compensation demonstrates exceptional ability. At the time of the denial, the petitioner had documented total $13,231.20 in earnings over the course of two years. He has not demonstrated that this level of pay is unusually high in his field of endeavor.

The petitioner submits a copy of an April 4, 2012 letter offering him "the position of Project Engineer" at [redacted] "for a minimum period of 2-3 months beginning April 9, 2012," with the prospect of "another assignment within [redacted]"[1] The position offered a salary of $71,899.92 per year. The petitioner submits no evidence to show how this salary compares with the level of compensation usually encountered in the field.

The petitioner has not satisfied this criterion.

Evidence of membership in professional associations. 8 C.F.R. § 204.5(k)(3)(ii)(E)

The petitioner's initial submission contained no evidence of memberships. The response to the RFE included information showing that the petitioner had registered for [redacted] scheduled to take place in September 2013 and March 2014.

The director, in the denial notice, stated that the petitioner submitted "[n]o evidence" of qualifying memberships. On appeal, the petitioner states that he had previously submitted the [redacted] conference information. This information does not show that [redacted] is a professional association, or that the petitioner was a member of that association. Rather, the conferences were gatherings of '[redacted] users," indicating that [redacted] is either a product or a manufacturer.

The petitioner submits a copy of a message dated February 26, 2009, acknowledging that the petitioner had registered with [redacted]. The message includes a copyright notice from [redacted] Inc. The petitioner indicates that this document shows that he is a "member of [redacted]" The petitioner did not show that [redacted] is a professional association, rather than a resource for developers of software for [redacted] products.

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[1] [redacted] job offer letter indicated that he would be "working in [redacted] MX" during the initial 2-3 month assignment. The petitioner's signature is on the letter, indicating acceptance of the job offer, but there is no evidence that the petitioner actually worked in Mexico in the spring of 2012. On Part 3, line 13 of Form I-140, the petitioner indicated that he has been in the United States since July 26, 2003.

Undated printouts identify the petitioner as a member of The petitioner submits no other information about these groups, and therefore he has not shown that they are professional associations. The two pages both show a logo used by which is not a professional association but rather a business-oriented social networking site.

The petitioner has not established membership in professional associations.

> *Evidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations.* 8 C.F.R. § 204.5(k)(3)(ii)(F)

In his introductory statement, the petitioner stated: "While obtaining my degree, I have received awards one of which is the for my research in the use of " The petitioner did not submit evidence to support these assertions. *See Matter of Soffici*, 22 I&N Dec. at 165.

In response to the RFE, the petitioner submitted documentation from showing that he received two scholarship payments of $3,083.45 each for the 2008-2009 and 2009-2010 school years. An unattributed statement reads:

> The School of engineering scholar-ship [*sic*] for **Information Intelligence** is awarded to outstanding individuals or students who contributed in development, implementation of new technological ideas, educational, research programs to meet a rapidly expanding requirement in the technical world. The individual must be a role model in society, while developing/designing a project that helps the environment or in other areas that would be helpful to the whole country as a whole [*sic*].

(Emphasis in original.) Because the quoted statement has no attributed source, it is not evidence of the requirements for the scholarship. Furthermore, the university documentation states that the petitioner received financial aid from the "SECS Scholarship" fund, but there is no reference to a "scholarship for Information Intelligence."

The petitioner also submitted letters from people who have worked and/or studied with him. Many of these individuals described the petitioner's duties and offered general praise for his work. In terms of discussion of specific contributions and their significance, the most detailed description is in a letter signed by Dr. interim head of

> [The petitioner's] Notification alert System design using the PI notification tool, by adding all the calculation of the achieve shift and other system shifts is very ingenious. The tool [is] currently playing an important role in our services delivery and prevention of outage or a shut down before it occurs.

In denying the petition, the director noted "letters of support from the petitioner's friends and acquaintance," but stated that the record lacked "documentation showing that the [petitioner] has been recognized by peers, governmental entities, or professional or business organizations for achievements and significant contributions to the industry or field." The director concluded that the petitioner had submitted "[n]o evidence of recognition for achievement."

On appeal, the petitioner refers, without elaboration, to "evidence already submitted to satisfy this prong," along with a newly submitted "Certificate of Achievement," dated May 30, 2014, which the petitioner received "for The petitioner received this certificate more than a year after the filing date, and therefore it cannot establish eligibility at the time of filing. Furthermore, he has not shown that the certificate constitutes recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations. The petitioner has not met this criterion.

b. Member of the Professions with an Advanced Degree

The petitioner did not claim to be a member of the professions holding an advanced degree, but the director considered the matter because the petitioner had not established exceptional ability.

The regulation at 8 C.F.R. § 204.5(k)(3)(i) provides that, to establish eligibility as a professional holding an advanced degree, the petitioner must submit either:

> (A) An official academic record showing that the alien has an United States advanced degree or a foreign equivalent degree; or
>
> (B) An official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree, and evidence in the form of letters from current or former employer(s) showing that the alien has at least five years of progressive post-baccalaureate experience in the specialty.

At the time he filed the petition, the petitioner stated: "I have obtained my **5 year baccalaureate degree**" from (discussed above) and "**almost a decade worth [of] work experience** . . . where my level of responsibility, work exerted, and complexity of the tasks taken increased progressively over the course of years" (emphasis in original).

The petitioner's undergraduate studies at continued until the winter 2010 semester, approximately three years before the petition's May 2013 filing date. Therefore, regardless of the complications regarding the awarding of the degree, the petitioner cannot have earned the required five years of progressive post-baccalaureate experience between the time he finished college and the filing date. The evidence of record shows that the petitioner held neither an advanced degree nor its equivalent at the time he filed the petition. The director, accordingly, made such a finding in the denial notice. The petitioner has not contested this finding on appeal.

The director, in the decision, made no finding on the merits of the petitioner's application for a national interest waiver of the job offer requirement. The waiver is available only to foreign workers who otherwise qualify for classification under section 203(b)(2)(A) of the Act. Because the petitioner has not established eligibility for the underlying immigrant classification, the issue of the national interest waiver is moot.

We note that the regulation at 8 C.F.R. § 204.5(k)(4)(ii) requires that a petitioner seeking to apply for the exemption must submit Form ETA-750B, Statement of Qualifications of Alien, in duplicate. Form ETA-750B is now obsolete, but sections J, K and L of the successor form, ETA Form 9089, Application for Permanent Employment Certification, fulfill the same purpose. The record does not contain either version of this required document, and therefore the petitioner has not properly applied for the national interest waiver.

III. Conclusion

The petitioner does not hold an advanced degree or its defined equivalent, and he has not overcome the director's finding that he has not established exceptional ability. We will dismiss the appeal for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the petitioner has not met that burden.

ORDER: The appeal is dismissed.